



11/23/51 HUBBLE ET AL. v. CACHE COUNTY DRAINAGE

237 P.2d 843 (1951) | Cited 0 times | Utah Supreme Court | November 23, 1951

HENRIOD, Justice. This is an appeal from a judgment involving rights of persons owning property outside a drainage district with respect to discharge of waters by the drainage district corporation over or adjacent to the land of such persons. Since this appeal was perfected, the interested parties have stipulated to the entry of a modified decree by the lower court, and we therefore remand this case to the District Court of Cache County, Utah, with instructions to enter a decree in accordance with such stipulation. In so deciding, this court does not pass on the matters incorporated in the decree of the lower court.

Both sides have consented that this Court confine its decision to an answer of the following question: 'May a drainage district created under our statutes increase its system and/or facilities so as to create additional burdens on the land of those outside the district without responding in damages, resorting to eminent domain, or being subject to injunctive relief?'

We answer this question in the negative and reaffirm the decision of Croft v. Millard County Drainage Dist., 1921, 59 Utah 121, 202 P. 539, 541, which also answered the question in the following language: '* * * this court is of opinion that under our Constitution and laws a drainage district organized and doing business as such is liable to the owner of property for any damage it may do within the scope of its powers as a drainage district.'

Each side to bear its own costs on appeal.

